

The Orissa Gazette

EXTRAORDINARY
PUBLISHED BY AUTHORITY

No. 1073 CUTTACK, TUESDAY, JULY 5, 2005 / ASADHA 14, 1927

LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 20th June 2005

No. 5131—II/1(B)-133/1999-L.E.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 17th May 2005, in Industrial Dispute Case No. 14 of 2000 of the Presiding Officer, Labour Court, Bhubaneswar to whom the industrial disputes between the Management of Executive Engineer, Nimapara Irrigation Division, Nimapara and its Workman Shri Prasanna Kumar Rout was referred for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE LABOUR COURT, BHUBANESWAR

INDUSTRIAL DISPUTE CASE No. 14 OF 2000

Dated the 17th May 2005

Present :

Shri P. K. Sahoo, O.S.J.S. (Jr. Br.)
Presiding Officer, Labour Court
Bhubaneswar.

Between :

The Executive Engineer
Nimapara Irrigation Division
Nimapara.

... First Party—Management

And

Shri Prasanna Kumar Rout
S/o Late Manmohan Rout
Via Naranpur, Samil Chandanpur
P. O. Patrapur, P.-S. Kakatpur
Dist. Puri.

... Second Party—Workman

Appearances :

For the First Party—Management . . . None

For the Second Party—Workman himself . . . Shri P. K. Rout

AWARD

The State Government in exercise of powers conferred by sub-section (5) of Section 12, read with clause (c) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 have referred the matter in dispute to this Court in the Labour and Employment Department Memo No. 1748(5)/L.E., dated the 29th January 2000 for adjudication and award.

2. The terms of reference may briefly be stated as follows :

“Whether the termination of services of Shri Prasanna Kumar Rout, N.M.R. Painter with effect from the 1st November 1995 by way of refusal of employment by the Executive Engineer, Nimapara Irrigation Division, Nimapara is legal and/or justified ? If not, what relief Shri Rout is entitled to ?”

3. Briefly stated the case of the workman Shri Prasanna Kumar Rout is that he was engaged under the management of Executive Engineer, Nimapara Irrigation Division, Nimapara (in short the management) as N. M. R. with effect from the 11th December 1977. He rendered continuous service at different places with much sincerity, devotion and to the utmost satisfaction of the management, but the management without any rhyme or reason illegally terminated him from service with effect from the 1st November 1995 by way of refusal of employment without giving any prior notice or notice pay and retrenchment compensation as contemplated under Section 25-F of the Industrial Disputes Act, 1947 (in short the Act). According to him, the action of the management in terminating him from service by way of refusal of employment with effect from the 1st November 1995 was illegal and unjustified. Under the above premises, he has now prayed for his reinstatement in service with back wages and other service benefits. Hence the reference.

4. The management, on the other hand, filed written statement opposing the claim of the workman. According to the management, the claim already made by the workman is not tenable in the eye of law and the workman is not entitled to any relief as prayed for. Accordingly the management has prayed for rejection of the claim of the workman under the present reference. At subsequent stage the management did not appear and contest the case as a result it was set *ex parte*. The *ex parte* hearing commenced on the 5th November 2004. During *ex parte* hearing the workman himself has examined as W. W. 1 and has relied upon series of documents marked as Exts. 1 to 4 respectively.

5. The perusal of the evidence of the workman clearly emerges that he joined in the establishment of the management as N. M. R. with effect from the 1st October 1977. He continued to work under the management at different places till he was terminated from service by way of refusal of employment with effect from the 1st November 1995. The workman has categorically stated that the management while terminating his service had not given any notice or notice pay and retrenchment compensation. Since the action of the management in terminating him from service by way of refusal of employment with effect from the 1st November 1995 was illegal and unjustified, he has now claimed for his reinstatement in service with full back wages and other service benefits. During evidence he has duly proved all the documents

already relied upon by him. The evidence of the workman in this respect has nowhere been challenged by the management during evidence. In absence of any rebuttal evidence, I find no cogent reason to disbelieve his evidence. Rather the unchallenged testimony of the workman clearly goes to show that he had rendered continuous service with effect from the 11th December 1977 till the 1st November 1995 when he was illegally terminated from service by way of refusal of employment by the management. The management while terminating the services of the workman had not followed the mandate of Section 25-F of the Act which in my view are in complete violation of the said Act. The Hon'ble Apex Court in catena of decisions has consistently taken the view that "The provisions of Section 25-F of the Act is mandatory and any violation therefore will render the retrenchment void *ab initio*". After carefully examining the evidence on record and the documents already relied upon by the workman I am of the considered view that the action of the management in terminating the services of the workman with effect from the 1st November 1995 by way of refusal of employment was illegal, unjustified and against the mandate of Section 25-F of the Act. In that view of the matter, the workman is entitled to the relief of reinstatement.

6. The perusal of the schedule of reference clearly reveals that the workman has been terminated from service with effect from the 1st November 1995 and there is no cogent material on record to prove and establish that he has been gainfully employed elsewhere with effect from the date of his termination. In such premises, the workman is entitled to be reinstated in service but on the facts and circumstances of the present case, as the workman had not worked with effect from the date of his termination, he is entitled to a lump sum compensation to the tune of Rs. 3,000 towards back wages.

7. Hence it is ordered.

ORDER

That the termination of services of Shri Prasanna Kumar Rout, N. M. R. Painter with effect from the 1st November 1995 by way of refusal of employment by the Executive Engineer, Nimapara Irrigation Division, Nimapara, is neither legal nor justified. The workman Shri Rout is entitled for reinstatement in service with a lump sum compensation of Rs. 3,000 (Rupees three thousand only) towards back wages.

The reference is thus answered accordingly *ex parte*.

Dictated and corrected by me.

P. K. SAHOO
17-5-2005
Presiding Officer
Labour Court, Bhubaneswar.

P. K. SAHOO
17-5-2005
Presiding Officer
Labour Court, Bhubaneswar.

By order of the Governor
D. MISHRA
Under-Secretary to Government